

INCOME TAX

Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS

V.

TAXPAYERS

Taxpayer(s)

No.
SSN:

Daniel D. Mangiamele
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: ATTORNEY, on behalf of TAXPAYERS.

Synopsis:

This matter is before this administrative tribunal as a result of a timely Request for Hearing by TAXPAYERS (hereinafter referred to as the "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on September 29, 1995 for the tax year ending December 31, 1990, 1991, and 1992. The basis of the amended Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the year ending December 31, 1990, 1991 and 1992. The Notice proposes an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to pay the entire tax liability by the due date and failure to pay estimated tax respectively.

The hearing in this matter was held on April 2, 1996. The issues to be resolved are:

- (1) Whether the taxpayers failed to file an Illinois income tax return for the tax years 1990, 1991 and 1992?
- (2) Whether penalties should be assessed pursuant to 35 **ILCS** 5/1001, 5/1005, and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld in its entirety.

Findings of Fact:

(1) The Department of Revenue adjusted taxpayer's taxable income to include a completed and settled federal change.

(2) The Department of Revenue issued a Notice of Deficiency for the subject taxable years. Dept. Ex. No. 1.

(3) Taxpayers did not file Illinois income tax returns for the years 1990, 1991, and 1992.

(4) Taxpayer TAXPAYER did not appear at the hearing, despite proper notice sent.

(5) Taxpayer TAXPAYER, appeared through her attorney, but no testimony or evidence was introduced on her behalf.

Conclusions of Law:

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). The taxpayers, as Illinois residents who earned income in this state, were accordingly subject to Illinois income tax and were required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 *et seq.*)

The Notice of Deficiency is *prima facie* correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill. App.3d 210 (3rd Dist. 1983). In order to overcome this *prima facie* correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill. App.3d 11 (1st Dist. 1978). The taxpayer has not met this burden in this case.

The taxpayers presented no evidence that the computation of additional tax due was incorrect. Thomas Howe did not appear at the hearing. TAXPAYER's attorney appeared on her behalf but offered no documentary or oral evidence to support taxpayer's protest.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date and failure to pay estimated tax, respectively.

Having determined that the taxpayers have failed to file and pay income tax for the 1990, 1991, and 1992 tax year, the issue of imposition of these penalties is proper.

It is my recommendation that this case be decided in favor of the Department and against the taxpayers and the Notice of Deficiency be finalized in its entirety.

Daniel D. Mangiamele
Administrative Law Judge